

Civil Liberties

The realities of the post-September 11th world mean we must be vigilant to protect the country from acts of terrorism. Unfortunately, there have been reports of the government taking the legitimate need to protect its citizens too far. As Ben Franklin said, "any society that would give up a little liberty to gain a little security will deserve neither and lose both."

While it is our responsibility in Congress to do everything within the law to protect our nation, I do not believe we should give the government unchecked power to intrude upon the private lives and constitutional rights of American citizens. I feel we can, and must, effectively fight terrorism while protecting these rights.

Reforming the Patriot Act

Just weeks after the tragic events of September 11th, Congress passed the PATRIOT Act, giving the federal government new powers to combat terrorism, and dramatically increasing the funding for many anti-terrorism programs already in existence. With new advances in technology, such as mobile phones and the Internet, it has become necessary to permit the investigation of potential terrorists in new ways.

We must do all that we can to enhance national security - but not at the expense of fundamental American rights and liberties. While the PATRIOT Act was designed to help law enforcement agencies more effectively combat terrorism, many provisions have serious implications for the future of American civil liberties. Of particular concern are the use of National Security Letters, the secretive Foreign Intelligence Surveillance Court (FISA Court), and Section 215, which allows FISA to give law enforcement agents access to any "tangible item" regardless of the business or individual holding that item.

For these reasons and more Congressman Baird opposed reauthorization of the PATRIOT Act and voted against it.

Congressman Baird also supported successful legislation adding additional protections to the PATRIOT Act. These protections allow recipients of government records requests who contest these requests in

court to challenge nondisclosure orders about the records request one year after their case is filed, eliminate the requirement that recipients of national security letters who challenge these letters in court disclose to the FBI the names of their attorneys, and specify that libraries that provide Internet access are not subject to national security letters demanding user identifies or transactions.

Challenging Domestic Surveillance

Congressman Baird had serious concerns about the legal and constitutional implications of the Administration's domestic surveillance program. The program appears to violate the 1978 Foreign Intelligence Surveillance Act (FISA), which require judicial authorization for the kind of wiretapping undertaken by the NSA. The purpose of FISA is to balance national security needs for intelligence gathering against the Constitutional protections of the Fourth Amendment. The Administration's claim that the surveillance authority was approved by the 2001 authorization of force Congress passed in response to 9/11 also rings false.

Congressman Baird joined many of his colleagues in sending letters to the National Security Agency, Department of Justice, Department of Defense, and the House Permanent Select Committee on Intelligence requesting swift and thorough oversight investigations into these actions. He also signed on to an amicus brief supporting a legal challenge to the domestic surveillance program because he believes the President overstepped his authority in authorizing the program.

Most recently, Congressman Baird voted against the Administration's attempt to expand its domestic surveillance powers at the cost of judicial oversight and in support of legislation that strikes an important balance between safeguarding civil liberties while ensuring our nation's security.

Preserving Habeas Corpus

Congressman Baird believes that U.S. law and international treaties which the U.S. has signed prohibit the use or facilitation of torture. He has voted repeatedly to prevent the use of federal funds to conduct or enable the torture of an individual, regardless of nationality and will continue to do so in the future.

Following the 2004 Supreme Court decisions which found that the President could not hold enemy combatants indefinitely, the President established a military tribunal process without any input from Congress. This process was struck down by the Supreme Court in the Hamdan v. Rumsfeld decision. The Court determined that the President had overstepped his power in ordering such trials without specific authority from Congress, and that he had violated both the Uniform Code of Military Justice and the laws of war codified in the Geneva Conventions, treaties which the United States has ratified. This ruling led to the Administration's

acknowledgement that detainees in the war on terror are in fact covered by Geneva Convention provisions prohibiting "humiliating and degrading treatment."

In response, President Bush presented Congress with a legislative proposal to establish a system of military commissions to prosecute alien unlawful enemy combatants. Due to the concerns of some Members of the U.S. Senate, a compromise proposal, the Military Commissions Act, was developed. This measure was passed and signed into law by President Bush.

The Military Commissions Act included a troubling provision which denies fundamental Habeas Corpus protections, which are guaranteed by the U.S. Constitution, to individuals being detained as enemy combatants. Habeas Corpus rights, which precede even the Magna Carta, allow those imprisoned to challenge the legality of their imprisonment and were put into place to ensure that the government does not hold people indefinitely and without a valid reason. By denying Habeas Corpus rights to those being held as enemy combatants, we run the risk that innocent people will be detained by the U.S. government indefinitely. For these reasons, and because he feels strongly about his duty to uphold the Constitution, Congressman Baird voted against this bill when it came before the House.

He remains concerned that the Military Commissions Act allows the President to define "non-grave" breaches of the Geneva Conventions. Congressman Baird has serious concerns about permitting selective interpretation of our international treaty obligations, particularly under the Geneva Conventions. He feels that the U.S. runs the risk of alienating long-time allies that are crucial in the fight against terrorism and opening the door to other countries selectively reinterpreting their obligations under the Conventions.

Congressman Baird is a cosponsor of the Habeas Corpus Restoration Act. This bill seeks to restore habeas corpus rights as they existed prior to the passage of the Military Commission Act.

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